

Service Date: June 28, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF Clark Fork)	UTILITY DIVISION
Telecommunications, Inc.'s Implementation of)	
1+ IntraLATA Dialing Parity)	DOCKET NO. D98.10.223
)	ORDER NO. 6180

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On December 22, 1998, Clark Fork Telecommunications Inc. ("Clark Fork", or "Company") filed its Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). The Company requests approval of the procedures and process it intends to use to implement 1+ intraLATA dialing parity.

2. Clark Fork filed its Plan in response to AT&T Communications of the Mountain States, Inc.'s. (AT&T) issuance of a Bona Fide Request (BFR) to implement intraLATA equal access in the Company's service area. AT&T's BFR was received on October 6, 1998.

3. On April 16, 1998, the Commission adopted rules governing local exchange carriers' (LEC) implementation of intraLATA dialing parity in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). These rules provide the procedures and requirements for LECs' dialing parity implementation. *See* ARM 38.5.4101 – 38.5.4120.

4. ARM 38.5.4120 requires Clark Fork to convert to intraLATA equal access pursuant to a Commission-approved plan and allow interested persons a reasonable opportunity to comment on the Plan. No persons filed formal comments. Clark Fork states that its Plan conforms to the Commission's rules at ARM 38.5.4101 *et seq.*

5. Clark Fork originally filed for a waiver of ARM 38.5.4120(1) requesting that they be allowed to file their Plan within two (2) weeks of final Commission approval of D98.10.233 (See *In the Matter of Southern Montana Telephone Company's Implementation of 1+ IntraLATA Dialing Parity*, Order 6126, December 11, 1998). On December 8, 1999 the Commission granted Clark Fork's request. The Plan initially called for dialing parity implementation on a statewide rather than LATA basis. However, after staff analysis, it was determined that Clark Fork's application was anti-competitive. After discussions with the Company, Clark Fork withdrew its Plan. At a March 9, 1999 worksession, the Commission required the Company to refile its Plan by March 16, 1999, which it did. On March 23, 1999, the Commission approved part of Clark Fork's "Amended" Plan and waived ARM 38.5.4120(3) allowing the Company to inform interexchange carriers of dialing parity presubscription in less than the required 120 days prior to conversion. On April 20, 1999, the Commission approved Clark Fork's customer notification procedures and practices (letter) pursuant to ARM 38.5.4104(1). The Company complied with the Commission's decision requiring customer notification no later than May 17, 1999.

6. Partial approval of Clark Fork's Plan was required in order for the Company to meet both the Montana Commissions' dialing parity rules and the deadlines established by the Federal Communications Commissions' March 23, 1999 Order (See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order, CC Docket No. 96-98, adopted March 19, 1999, released March 23, 1999). The Order

requires LECs to convert to intraLATA equal access within thirty (30) days after receiving state commission approval. However, because the Plan was already in the implementation process, the Commission approved Clark Fork's request to maintain the initial conversion date while delaying the effective date until thirty (30) days prior to June 16, 1999—the date of conversion.¹ To that end, the Commission approved the Company's Plan in stages with final approval on June 8, 1999 (See Notice Of Commission Action dated March 24 and April 27, 1999).

7. Following a review of Clark Fork's Plan the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

8. The Commission established the intraLATA equal access implementation rules “to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).” ARM 38.5.4101, entitled “SCOPE AND PURPOSE OF RULES.” Subsection (2) provides further indication of purpose in adopting the rules:

... The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested persons. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T's

¹ See Montana Public Service Commission letter to Anna M. Gomez, Division Chief, Common Carrier Bureau dated April 14, 1999. The FCC has indicated to staff that this approach is acceptable considering the unique situation Montana is under (Staff conversations with FCC's Common Carrier Bureau, March-April 1999).

original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

9. ARM 38.5.4120(1) states that ILECs “shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116.” ARM 38.5.4120(1) also provides that interested persons who wish to comment on a LEC’s toll dialing parity plan shall have a reasonable opportunity to do so.

10. ARM 38.5.4120 provides that Clark Fork’s Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in, and the manner of distribution of, the customer notification letter;
- (c) a description of Clark Fork’s anticipated cost of implementation, including Clark Fork’s specific implementation costs, the vehicle that Clark Fork intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Clark Fork’s proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Clark Fork in its role as a local exchange provider in a competitively neutral manner following implementation.

11. This order does not define terms relating to dialing parity or equal access presubscription; these and other terms are defined in ARM 38.5.4102. We address the general subtopics of intraLATA equal access implementation with respect to Clark Fork’s Plan below:

A. Implementation Schedule

12. Clark Fork will begin offering intraLATA dialing parity in all of its exchanges by June 16, 1999, which coincides with its monthly carrier billing cycle. This implementation date is more than the 120 day requirement demanded by ARM 38.5.4103(2)(a). However, subsection

(2)(b) provides that local exchange carriers may implement dialing parity pursuant to an alternative schedule if all interexchange carriers who have made bona fide requests (BFRs) agree to a different schedule. AT&T, the only requesting carrier, does not object to Clark Fork's schedule. On March 23, 1999, the Commission waived ARM 38.5.4103(2)(a) and approved this alternate schedule (See Notice of Commission Action, March 24, 1999).

B. Carrier Notification Procedures, Customer Lists and Letters of Authorization

13. *Carrier notification:* ARM 38.5.4120(3) requires that Clark Fork provide notice to all registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. All carriers wishing to participate in presubscription must respond to Clark Fork within 30 days. Further, Clark Fork may only allow registered telecommunications providers to participate.

14. Clark Fork's attached its proposed Carrier Participation Notice as Exhibit A to its Plan. It requires carriers who wish to participate in presubscription to return the "IntraLATA Equal Access Participating Carrier" form to Clark Fork within 30 days after receiving such notice.

15. Clark Fork's Plan includes a provision that it will acknowledge all IXC requests to participate within 5 business days of receipt of the request. The acknowledgement provision was added as a result of previous Commission decisions beginning with US West's implementation plan (See D98.4.86, Order 6063a).

16. The Commission will not require Clark Fork to notify all carriers by U.S. Mail. The Commission has established an electronic "ListServe" which allows a LEC to notice IXCs of its Plan via the use of electronic mail. At Clark Fork's option, this procedure was used in lieu

of regular mail. The Commission's "Listserve" includes carriers who have registered on the Commission's website as required by Montana law and have provided e-mail addresses on the website. Clark Fork elected to use the electronic "Listserve." The Commission required Clark Fork to mail its carrier notification by first class mail to registered carriers who could not be contacted electronically.

17. Clark Fork's proposal for carrier notification was approved with these modifications on March 23, 1999 (See D98.10.233, Notice of Commission Action, March 24, 1999).

18. *Customer lists:* ARM 38.5.4105(2) requires that Clark Fork "not more than 45 days after receipt of a bona fide request for implementation of intraLATA equal access, if no waiver has been sought... make available to all registered carriers that intend to offer intraLATA equal access presubscription a complete list, upon request, which may be provided electronically, of the primary toll carrier's customers by name, address and phone number." Clark Fork will charge \$0.10 per customer record, which the company believes is at or below cost. The Company did not supply the Commission with a cost analysis demonstrating their claim, because, Clark Fork asserts, it is economically burdensome to verify the cost. Therefore, the Commission waived ARM 38.5.4105(2). Clark Fork will charge the same rate to each requesting IXC for a list of its customer pursuant to this rule.

19. Clark Fork delayed the filing of its Plan pending the outcome of the Commission decisions in D98.10.233. As a result, Clark Fork did not make available such list within the required 45 days after receipt of a bona fide request (BFR). Therefore, the Commission granted Clark Fork's request to waive ARM 38.5.4105 (2), thus allowing Clark Fork to make available

such list seventy-five days after receipt of a BFR not 45 days as required by this rule (See Notice of Commission Action, June 1, 1999).

20. *PIC change requests:* Clark Fork is required by ARM 38.5.4116(1)(e) to accept Letters of Authorization or Agency (LOAs) no earlier than 60 days prior to conversion. Clark Fork began accepting LOAs from carriers on February 15, 1999. Clark Fork will only process these LOAs that conform to ARM 38.5.3801 through 38.5.3810, the Commission's slamming rules adopted in Docket No. L-99.1.1-RUL, and § 69-3-1304, MCA. Further, the Commission required Clark Fork to begin taking requests from customers at the same time it began to take requests from carriers.

C. Customer Notification, Education, and Safeguards

21. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) requires a LEC's plan to describe how notification to end users will be carried out, the language the LEC will use in its customer notification letter and describe the manner of distribution of such letter.

22. Customer education and presubscription procedures are also set forth in ARM 38.5.4105(4). This rule requires all informational materials, forms and scripts to be "complete, clear and unbiased." It requires local exchange carriers to promptly make any changes required by the Commission before using them and at least 30 days prior to its scheduled implementation, a LEC must provide written information to its customers describing intraLATA dialing parity and explaining presubscription procedures. The information provided pursuant to ARM 38.5.4104 will also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carrier—in this case, Blackfoot Communications—until the end users take action to change it. Clark Fork's customer

notification letter and the process it used to inform customers complies with ARM 38.5.4105 and was approved by the Commission on April 20, 1999 (See Notice of Commission Action dated April 27, 1999).

23. *Existing customer notification:* ARM 38.5.4104(1) requires the LEC to notify its existing customers at least thirty (30) days prior to conversion describing intraLATA dialing parity and explaining presubscription procedures. Clark Fork attached as Exhibit C its proposed format to notify customers. Notification was sent prior to May 17, 1999. Customers who subscribe to local service after May 17, 1999, but prior to June 16, 1999, will be provided a copy of this written notification and information upon subscribing to local exchange service. The rule also requires the LEC to inform customers that they will remain with their current intraLATA carrier until they affirmatively choose otherwise. Finally, the notice must state that existing interLATA PIC freezes will be extended to the customers intraLATA account at the time of conversion. Clark Fork's notification procedures and practices for existing customers are consistent with Commission rule (See Notice of Commission Action, April 27, 1999).

24. *New customer notification:* Clark Fork's Plan will provide new customers who commence local service after the mailing to existing customers and before equal access is implemented information about their carrier selection options at the time they sign up for local service. Customers may select both their primary interLATA and intraLATA carriers or be assigned a "no PIC" status. If no carrier is selected, customers will have to dial carrier access codes to complete intraLATA toll calls. Clark Fork will waive a customer's initial intraLATA PIC selection charge for 30 days after local service is installed.

25. The Company attached to the customer notice a list of participating IXC's customers will be able to choose to carry their intraLATA toll traffic. Clark Fork's process and

procedures to notify new customers of dialing parity and their carrier selection option complies with the Commission's rules.

26. *Waiver Period:* ARM 38.5.4111(1) states that “no charge shall be imposed for a customer's initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange.”

27. *PIC charges:* ARM 38.5.4111 requires the implementing LEC waive a customers initial intraLATA PIC selection for a period of 90 days following conversion to equal access. Additionally, per Commission decision in D98.4.86, new customers who commence local exchange service from the implementing LEC will have 30 days after new service is installed to select an intraLATA carrier free of charge (See *In the Matter of US West Communications Implementation of 1+ intraLATA dialing parity*, D98.4.86, Order, 6063a). Subsequent PIC selections will be charged the same rate as those imposed for changing interLATA carriers. In case where a customer selects an interLATA and intraLATA carrier simultaneously, the LEC will charge a single PIC change charge. Clark Fork will comply with the requirements of 38.5.4111.

28. *Customer safeguards:* ARM 38.5.4116 provides for some safeguards that apply to the business office practices LECs will use when they implement intraLATA equal access. All customers who have an interLATA PIC freeze on their account will have that PIC freeze placed on their intraLATA service as well. Clark Fork will follow Montana statutes and administrative rules with regard to “slamming” and obtaining the required authorizations for PIC changes. The notice also explains presubscription procedures and advises end users that they may change their intraLATA PIC once, free of charge during the first 90 days following implementation.

29. Clark Fork's notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change and was approved on April 20, 1999 by the Commission (See Notice of Commission Action, April 27, 1999).

30. *Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires customer information and procedures used to provide new connects information about their carrier selection options be competitively neutral and approved by the Commission prior to their use.

31. New local exchange end users will be informed of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial carrier access codes to place these calls. New and existing customers may communicate their choice of carriers directly for either interLATA or intraLATA toll to Clark Fork through the local business office or they may do so indirectly through their selected IXC(s).

32. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, "When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings." Subsection (1)(c) further provides that when a customer contacts a LEC's business office to change the PIC from the LEC to a competitor, "the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another)."

33. Clark Fork will handle all customer initiated intraLATA PIC change requests in a neutral manner. It will provide a list of participating carriers names and phone numbers in

random order scrambled on a weekly basis to maintain neutrality. Further, many of the Commission's previously expressed concerns about contact handling by local exchange carriers that provide intraLATA toll service apply to Clark Fork because intraLATA toll is provided by an affiliate, Blackfoot Communications. Therefore, the Commission imposes some requirements for these contacts. This is discussed in more detail below.

34. ARM 38.5.4104(4) requires Clark Fork to provide the proposed script(s) to the Commission for review as part of its implementation plan. By rule, Clark Fork is required to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than "general service" contacts.

35. Clark Fork submitted the following script:

You may choose the long distance company you would like to handle your long distance calls in Montana. If you do not wish to make a selection at this time, you will have to dial a specific company's access code in order to make an in-state long distance call. Clark Fork has a list of companies offering in-state long distance in our service territory. If you would like, I can read that list to you.

Clark Fork's script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

36. The Commission recognizes that a script will not be appropriate for all calls. Some contacts will require that Clark Fork's representatives adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

37. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Blackfoot Communications, an affiliate of Clark Fork, provides

intraLATA toll to Clark Fork's end users. Therefore, reasonable LEC restrictions related to the marketing of customer-initiated calls to Clark Fork's business office apply. The Commission concludes that it is reasonable to prohibit Clark Fork from initiating marketing and promotional activities for Blackfoot's intraLATA toll services on contacts for new service, transfers of service and number changes.

D. Costs Recovery

38. Clark Fork claims it will incur incremental costs to implement intraLATA dialing parity which include the following: (1) network hardware upgrades to provide full 2-PIC methodology in all exchanges; (2) Clark Fork office software upgrades necessary for intraLATA presubscription; (3) software translations; (4) billing systems testing and table modifications; (5) personnel training; (6) customer notification; and (7) implementation activity, including consulting and regulatory costs. These costs are all recoverable pursuant to ARM 38.5.4115.

39. ARM 38.5.4120 requires Clark Fork to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Clark Fork states that it has not defined the incremental costs of implementation and that it believes the consultant and regulatory cost to determine a surcharge is uneconomical. Therefore, Clark Fork does not seek additional originating access fees to recover such costs, provided the regulatory process does not become burdensome and Clark Fork does not incur substantial unanticipated costs.

40. The Commission waived ARM 38.5.4115 and does not require Clark Fork to provide a cost analysis demonstrating its costs to implement dialing parity. The Commission is satisfied with Clark Fork's proposal. The public interest is best served by waiving the requirement for cost information for Clark Fork. If Clark Fork incurs substantial unanticipated

costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Clark Fork is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Clark Fork's intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 1st day of June 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.